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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO.

LORNE J. ACQUIN,

Petitioner

v.

STATE OF CONNECTICUT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE
STATE OF CONNECTICUT

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November 18, 1982

QUESTIONS PRESENTED

1. Does the decision of the Connecticut Supreme Court holding that the defendant was not "interrogated" when he was subjected to police-initiated questioning and strip searching immediately following his clearly articulated, thrice-repeated requests for counsel, conflict with the decisions of this Court in Edwards v. Arizona, 451 U.S. 477(1981) and Rhode Island v. Innis, 446 U.S. 291 (1980)?

2. Does the decision of the Connecticut Supreme Court holding that the defendant was not "seized" within the meaning of the Fourth Amendment when he was transported by State POlice thirty miles from his home and subjected to a four-hour, incommunicado questioning substantially conflict with the decisions of this Court in Dunaway v. New York, 442 U.S. 200 (1979); United States v. Mendenhall, 446 U.S. 544 (1980); and Reid v. Georgia, 448 U.S. 438 (1980)?

3. Does the decision of the Connecticut Supreme Court holding that the defendant's will to resist was not overborne by the conduct of the State Police who held the defendant for nineteen hours incommunicado, shifted him to four different police-dominated interrogation situations, and interrogated him in the presence of a state-employed psychiatrist conflict with the decisions of this Court in Culombe v. Connecticut, 367 U.S. 568 (1961); Estelle v. Smith, 451 U.S. 454 (1981); and Leyra v. Denno, 347 U.S. 556 (1954) and deny him rights guaranteed by the Fifth, Sixth and Fourteenth Amendments?

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

The petitioner, Lorne J. Acquin, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Connecticut entered in this proceeding on July 27, 1982.

OPINION BELOW

The opinion of the Supreme Court of the State of Connecticut is reported at 187 Conn. 647 (1982) and appears in the Appendix hereto. The judgment of the Superior Court of the State of Connecticut, the trial court appears in the Appendix hereto.

JURISDICTION

The opinion of the Supreme Court of the State of Connecticut was entered on July 27, 1982. A timely motion to reargue was denied on September 22, 1982 by that court, and this petition for certiorari was filed within 60 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Does the decision of the Connecticut Supreme Court holding that the defendant was not "interrogated" when he was subjected to police-initiated questioning and strip searching immediately following his clearly articulated, thrice repeated requests for counsel, conflict with the decisions of this Court in Edwards v. Arizona, 451 U.S. 477 (1981) and

Rhode Island v. Innis, 446 U.S. 291 (1980)?

2. Does the decision of the Connecticut Supreme Court holding that the defendant was not "seized" within the meaning of the Fourth Amendment when he was transported by Connecticut State Police thirty miles from his home and subjected to a four-hour incommunicado questioning substantially conflict with the decisions of this Court in Dunaway v. New York, 442 U.S. 200 (1979); United States v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870 (1980); and Reid v. Georgia, 448 U.S. 438 (1980)?

3. Does the decision of the Connecticut Supreme Court holding that the defendant's will to resist was not overborne by the conduct of the State Police who held the defendant for nineteen hours incommunicado, shifted him to four different police dominated interrogation situations, and interrogated him in the presence of a state-employed psychiatrist conflict with the decisions of this Court in Culombe v. Connecticut, 367 U.S. 568 (1961); Estelle v. Smith, 451 U.S. 454 (1981); and Leyra v. Denno, 347 U.S. 556

(1954) and deny him rights guaranteed to him by the Fifth, Sixth and Fourteenth Amendments?

CONSTITUTIONAL PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES,

AMENDMENT IV

The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person . . . shall be compelled in any criminal case to be a witness against himself . . . .

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.

AMENDMENT XIV

Section 1. . . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens

of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .

STATEMENT OF THE CASE

FACTS

On November 13, 1979 Lorne Acquin was found guilty of the largest mass murder in the history of Connecticut and was sentenced to a term of not less than 105 years, nor more than life in prison. (App. B)[1]

The events which led to this conviction began shortly after 4:00 A.M. on July 22, 1977, when firefighters in the town of Prospect, while battling a residentail blaze at the home of Frederick Beaudoin, found the bodies of Cheryl Beaudoin, her seven children and a neighbor child, Jennifer Santoro. All the victims had been beaten, some had been bound, and Cheryl Beaudoin had been beaten and stabbed. Some of the bodies were charred

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1 In the interest of brevity and the preliminary nature of this petition citations contained herein are largely to those documents contained in the Appendix. Every fact, however, is definitively established by the entire Record.

beyond recognition. A few hours later, without probable cause, the Connecticut State Police picked up the defendant, a 27-year-old roofer of American Indian descent, who was the foster brother of Frederick Beaudoin. After a nineteen-hour incommunicado interrogation, the defendant signed a confession. He was indicted for nine counts of murder and a jury found him guilty of all counts. (App. 2a, 3a)

Of the evidence adduced during the lengthy trial, virtually the only link between the defendant and the murders was the seven-page confession obtained by the Connecticut State Police.

Prior to trial, the defendant moved to suppress his statement on Fourth, Fifth and Sixth Amendment grounds claiming that he had been seized at 9:30 A.M. on the morning of the fire; that there had been no probable cause for his seizure; that his Miranda rights had been violated; that his request for counsel had been ignored; and that the oppressive and coercive conditions of his interrogation produced an involuntary confession. (App. E)

At a pretrial hearing to suppress the confession and its fruits, it was established that at 6:58 A.M. on the morning of the fire, Detective Blais of the Connecticut State Police was ordered to search for Mr. Acquin who was considered a suspect. After two hours spent determining Mr. Acquin's whereabouts, Blais, State Trooper Hamila, and Detective Sergeant Messina, carrying service revolvers and a mug shot of the defendant, began a door-to-door search on the street where he lived. At 9:30 A.M., having located Acquin's house, an officer went behind the house, and another went to the front door. Acquin came to the door partially dressed. He was told only about a fire at the Beaudoin house, and was asked to go with the officers to the Prospect Town Hall, a few miles away, presumably to help in the investigation. While Acquin was dressing, Blais watched him "very, very closely"; as Acquin approached the police cruiser, Messina searched him and confiscated a double-edged razor-type roofing knife from his belt. No Miranda warnings were administered, but as soon as the defendant entered the car questioning began.

After dropping Messina at Waterbury Police headquarters, the troopers proceeded with the defendant in the rear seat of the police cruiser toward the Prospect Town Hall which was serving as the Command Post of the investigation. En route, the troopers, radioed that they had "located the subject". They were instructed by Lt. Shay, who was in charge of the investigation, to transport the defendant to the main State Police headquarters in Meriden, a distance of some thirty miles. (App. 4c; Tr. cites therein)

When the defendant questioned why they were going to Meriden, Trooper Blais told him: "That is where we were told to go." (App. 4c; 7/13/78 Tr. p. 63)

At the time of his order, Lt. Shay considered the defendant "a very serious subject in this case...a very, very important person" and ordered him transported to Meriden because "[we] like to have people talk to us on our turf...." in order to give [us] a psychological advantage, and because [people] are impressed with the official nature of the environment...away from the area that makes them comfortable...away from their friends and

family." (7/17/78 Tr. pp. 73-75)

The secretly taped conversations of the initial questioning at the Meriden State Police complex reveal that at 10:35 A.M. Blais read a standard Miranda warnings card to the defendant. Met with the defendant's staunch refusal to sign the warnings card, Blais repeatedly urged him to sign by false assurances that his statements would not be taken into court or repeated to anyone. (App. G; App. 7a, n. 3) Similarly, Blais reassured the defendant that he was not under arrest, but the defendant said, "It sounds to me like I'm being arrested." Blais insisted that Acquin was only being interviewed. (App. G)

The police continued to question the defendant about some scratches on his face and his activities during the previous night and early morning hours. Miranda warnings were again read to the defendant; he again refused to sign the card; and, once again, an officer contradicted the warnings as he urged the defendant to sign. The police had prepared a typed statement detailing the defendant's comings and goings the previous evening. The defend-

ant, who was barely literate, refused to sign the statement, asked that the part about its being used against him be obliterated, and refused to take a polygraph test. Blais viewed Acquin's continued refusals to sign as "resistance-type things." (7/13/78 Tr. p. 89)

In his taped and transcribed statement the defendant admitted to the police that he had gone berry picking with several of the Beaudoin children at around dusk on the evening of the fire; he explained several marks on his face and arms as the results of being assaulted and robbed in Waterbury much later that night. (App. 7a-8a)

Finally, Detective Zdanowicz, after four hours of questioning, told the defendant about the suspected homicides at the Beaudoin house; the defendant became emotional, began to cry, and asked to be taken home. (7/6/78 Tr. pp. 57, 116; 7/13/78 Tr. p. 99)

Zdanowicz, having telephoned all of this information to Shay at the Command Post, was directed not to release Acquin, but to bring him to the State Police Barracks in Bethany. Zdanowicz and Hamila

told Acquin they would take him home, but instead drove to the Command Post in Prospect. (7/6/78 Tr. pp. 58-59, 117, 122; 7/17/78 Tr. pp. 14-15, 99) At shortly before 2:00 P.M. Zdanowicz reported to Shay that Hamila was driving the defendant to Waterbury. Shay immediately radioed to Hamila ordering him to bring Acquin back. Hearing this, the defendant said he did not want to go; Shay again ordered Hamila to bring Acquin to the Bethany Barracks. The defendant again refused to go, but Hamila turned the cruiser back toward Bethany. (7/11/78 Tr. pp. 99-100)

At this point the defendant opened the car door; Hamila received a third order to bring Acquin in; Acquin got out of the car, but Hamila reassured him he would take him home; Acquin got back in the car, but Hamila began driving toward the Command Post; Acquin again got out of the car and started walking toward Waterbury. (Id., pp. 101-02; 7/6/78 Tr. pp. 61, 130-31)

Hamila radioed in and began following Acquin in his police car. Shay and four other officers in two police cars immediately drove to the scene. Shay walked briskly across the road to Acquin, put his arm around his shoulders and asked

him if he wanted to help in the investigation. Shay described the defendant as "glassy eyed, staring and non-communicative." (App. 11a)

For the next four hours Acquin was interrogated in an unventilated basement storage room at the Command Post. At the beginning of the second interrogation phase, Acquin again asked if he was under arrest. He was told that he was not under arrest, and Hamila again promised to take him home if he gave another statement. (7/11/78 Tr. p. 108-12, 116; 7/13/78 Tr. p. 116)

Finally at 5:45 P.M. Acquin stopped in the middle of Hamila's interrogation and said, unequivocally, "I think I'm in trouble. I better get a lawyer." Hamila asked: "Do you want a lawyer?" Acquin again unequivocally said, "I think I better get a lawyer. I think I got trouble." (App. 19a, n. 6)

At 6:00 P.M., Acquin's parole officer, Richard Kociszewski, arrived at the Command Post for the express purpose of seeing Acquin. Although Acquin had just invoked his right to counsel, Shay refused to allow Kociszewski to see Acquin, be-

cause Shay did not want to "interrupt the interview." Shay knew that Acquin was entitled to have a lawyer with him during questioning, but preferred that Acquin not have a lawyer, because in Shay's experience once an attorney "is present, the interview is generally over." (7/18/78 Tr. pp. 22, 30)

Similarly, during the time Acquin was being held, several friends, relatives, Acquin's employer, and a Department of Correction counselor tried to talk to Acquin and inquired whether he needed a lawyer. No one was allowed access to Acquin, and each was told the defendant did not want or need a lawyer. Hamila reported to State Police Captain McDonnell that Acquin wanted a lawyer. McDonnell sent Hamila out of the Command Post and continued his investigative plan. (Ex. 17, p. 3)

For one hour, from 6:00 to 7:00 P.M. following Acquin's invocation of the right to counsel, State Police Captain McDonnell continued to question Acquin alone in the storage room. For a third time Acquin said he wanted a lawyer. McDonnell asked the defendant to name an attorney, but the

defendant was unable to come up with the name of an attorney, and added that he didn't want the attorney that the police would call, because it would be just like talking to another cop. McDonnell pressed Acquin to name a lawyer. Finally, according to McDonnell, Acquin said that he would like to see Dr. Joel Albert, "a shrink or head doctor, but [Acquin did] not know if he was an attorney." McDonnell continued to question Acquin about some marks on his body and ordered Acquin to remove his pants, so that McDonnell could examine his legs. (7/18/78 Tr. pp. 63, 73-76, 101)

Some time after 7:00 P.M. Shay and McDonnell assigned a trooper to locate Dr. Albert. McDonnell told Hamila that they were going to get something to eat. Hamila and McDonnell drove the defendant past the remains of the Beaudoin house. At 7:30 they had a light supper in the cruiser; by 9:00 P.M. they had arrived at Troop I State Police Barracks, Bethany, where Acquin was again read Miranda rights.

At this point, the defendant had been in the company of police officers for almost twelve hours and had been transported to five different locations in five

different towns. Family and friends were still inquiring as to his whereabouts, his situation, and whether or not he needed a lawyer. All were put off by the State Police.

Joel Albert, who was employed by the Connecticut Department of Correction as a jail psychiatrist, remembered that he had treated Lorne Acquin and prescribed medication for him at the Bridgeport jail at least from December, 1975 until September, 1976. (Ex. 7, 8, 10)

Albert was brought to the Bethany Barracks in a State Police cruiser at 11:40 P.M. Albert testified that he had worked to maintain his "powerful" image among the inmates, and in that connection had sometimes obtained lawyers for them. (7/12/78 Tr. pp. 111-12)

McDonnell told Albert that Acquin wanted the psychiatrist's "presence before he was willing to make a statement to the police" and that Acquin "had not in any way incriminated himself." McDonnell made it clear to Albert that Albert would not in any way be permitted to assist the defendant; McDonnell said that "Acquin wanted to see [Albert], that McDonnell thought

Acquin had things to talk about and that all McDonnell wanted was for Albert to be present..." (7/14/78 Tr. p. 56)

Albert was never told that Acquin had asked for an attorney; he testified that had he known this, he would have told Acquin "'Lorne, keep your mouth shut. Let's get an attorney.'" (7/14/78 Tr. pp. 58, 59)[2]

The defendant claimed that he asked Albert to get him an attorney, and Albert replied "I don't think I can do that." (9/5/79 P.M., Tr. pp. 25-31, 38-39)

McDonnell and Albert entered the interrogation room and found Acquin sleeping in a chair. McDonnell left the room; Albert put his arm around Acquin's shoulders; expressed as best he could a feeling of warmth and asked Acquin if he wanted Albert there. The defendant replied that he did. Albert called McDonnell back into the room; Albert and Acquin sat on one side of the table and McDonnell sat across

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2 The testimony of the defendant, McDonnell and Albert disagreed regarding this and the facts which follow.

from them. McDonnell said, "Tell the doctor what happened last night." (Ex. 17, p. 20) The defendant objected: "No, I don't want to tell you." (7/18/78 Tr. pp. 85-86, 104-05) At this point McDonnell began questioning Acquin and an oral confession began. Albert thought as he listened that Acquin was a suicide risk and he was "on watch" for a possible breakdown requiring immediate commitment to a psychiatric institution. (7/7/78 Tr. pp. 31-33, Ex. 5, pp. 13-14)

Following the oral confession, Trooper Hamila went back into the interrogation room, read the defendant his Miranda rights, but the defendant again refused to sign the card. Hamila, in the presence of Dr. Albert, then interrogated the defendant for four more hours. While the confession was being typed up, Acquin and Albert were alone; Albert continued to reassure Acquin.

At 5:10 A.M. after having been in police company, incommunicado, for nineteen hours; after having been questioned in four different police-dominated locations, in four different towns, by five different State Policemen; after having

been searched and strip searched; and after having been interrogated in the presence of a State-supplied, State-employed psychiatrist, the defendant signed a seven-page, typewritten confession.

RULINGS BELOW

The lower court in denying the defendant's motion to suppress the confession, did not disagree with the undisputed facts recited above. The court, sitting as fact finder, assumed that the defendant had been taken into custody at 9:30 a.m. without probable cause. (App. F) Making its decision without benefit of this Court's decision in Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248 (1979), the Court held that the long hours of interrogation and the repeated Miranda warnings had removed the taint of the illegal arrest. The lower Court, again without benefit of this Court's decision in Edwards v. Arizona, supra, also held that the defendant's request to see Dr. Albert and his subsequent confession constituted a waiver of his right to counsel; the Court further held, despite psychiatric evidence to the contrary, that the defend-

ant's confession was voluntary and that the conduct of the police officers did not overbear the defendant's will to resist.

In his appeal to the Supreme Court of Connecticut, the defendant argued that he was in custody from 9:30 a.m. and that this detention had been without probable cause. He further argued that he had three times invoked the right to counsel and that all interrogation should have ceased at that point, and he further argued that the circumstances of his interrogation and the introduction of a State-employed psychiatrist into the interrogation process had overborne his will and therefore rendered his confession involuntary.

The Supreme Court of Connecticut reached the questions tendered. That Court, disagreeing with the lower Court, held, on the Fourth Amendment question, that the defendant was not in custody until 2:00 p.m., because up until that time "any reasonable person would have felt free to leave," and that at 2:00 p.m. there was probable cause to arrest the defendant. On the Fifth and Sixth Amendment question the Supreme Court of Connecticut held that

questioning of the defendant after the invocation of the right to counsel was not "interrogation" within the meaning of Rhode Island v. Innis, supra. The Connecticut Court also upheld the lower Court's contention that the circumstances of the interrogation, including the presence of the State's psychiatrist, did not "overbear the defendant's will to resist." (App. 1a-54a)

REASONS FOR GRANTING THE WRIT

The Decision of the Supreme Court of the State of Connecticut is in Direct Conflict with this Court's Decisions in Edwards v. Arizona, 451 U.S. 477 (1981) and Rhode Island v. Innis, 446 U.S. 291 (1980).

Eighteen months ago, in Edwards v. Arizona, 451 U.S. 477 (1981) this Court held, under the Fifth and Fourteenth Amendments, that:

> when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. We further hold that an accused, . . .

> having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges or conversations with the police.

Edwards v. Arizona, 451 U.S. 477, 101 S. Ct. 1880, 1884-85 (1981).

The case now before this Court, State v. Acquin, is not only on all fours with Edwards, but is more compelling than Edwards.

In Edwards and Acquin, both defendants invoked the right to counsel. Edwards said, "I want an attorney before making a deal"; Acquin, in the middle of interrogation, stopped and said, "I think I'm in trouble. I better get a lawyer." The trooper questioning Acquin asked if he wanted a lawyer. Acquin repeated, "I think I better get a lawyer. I think I got trouble.:

In Edwards, the interrogation ceased immediately upon invocation of the right to counsel and Edwards was taken to the jail. The next morning, at 9:15 a.m. two detectives came to the jail and began interrogating Edwards, despite his prior

request for counsel.

In Acquin, the initial request for counsel occurred at 5:45 p.m., after Acquin had been in the company of police officers since 9:30 a.m. and had been subjected to interrogation on and off for the vast bulk of that time. Prior to invoking the right to counsel, Acquin had been interrogated, for more than three hours, in the middle of July, in a 12' x 12' unventilated storage room. The trooper who had been interrogating Acquin reported the accused's invocation of the right to counsel, to his superior. His superior, Captain McDonnell entered the storage room at 6:00 p.m., a mere fifteen minutes after the invocation of counsel. According to McDonnell, he entered the room and told Acquin that the trooper "told me you want an attorney." Acquin said that he did want counsel.

McDonnell remained in the interrogation room for over an hour questioning the defendant. McDonnell admitted that during this period he ordered Acquin to remove his trousers so that McDonnell could examine some bruises on his legs. According to McDonnell he continued to question Acquin about which lawyer he wanted.

McDonnell cast upon the semi-literate defendant, who had been subjected to ten hours of interrogation, the burden of naming a particular attorney. Acquin was unable to come up with the name of a lawyer. According to McDonnell, Acquin again reiterated his request for counsel by indicating that he did not want any lawyer that the police would call, because it would be just like "talking to another cop." (Tr. 7/18/78 pp. 74-75) McDonnell continued to press Acquin to come up with the name of a lawyer; finally Acquin said that he wanted to see Dr. Albert, "a shrink or a head doctor," but Acquin was not sure if Albert was an attorney.[3]

Before Albert was brought to Bethany in a State police cruiser, McDonnell drove Acquin past the crime scene and changed the locus of the interrogation to yet

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3 McDonnell's claim that he was trying to find out who the defendant wanted for a lawyer is diluted by the clear, uncontraverted evidence that friends and family of Acquin were continually asking the police if he needed a lawyer. They were told he didn't need a lawyer, and no one, not even his parole officer was permitted to see him. See Culombe v. Connecticut, 367 U.S. 609, 637, 638, 639.

another police station.

It is clear that the State Police brought Dr. Albert to the Bethany Barracks for the very purpose of encouraging Acquin to make a statement, even though he had invoked his right to counsel at least four different times. As McDonnell testified, "He wanted to sit and have somebody sitting with us that he trusted before he had any further conversation." McDonnell also claimed that Acquin said he would "tell the truth" if Albert was there. Thus, it is obvious that bringing Albert to the State Police barracks was an action taken at the initiative of the police and calculated to encourage the defendant to incriminate himself. Obviously, this is an interrogation technique as defined in Rhode Island v. Innis, 446 U.S. 291, 301 (1980).

The Connecticut Supreme Court reached the Edwards question as tendered by the defendant, but held in direct contravention of Edwards that the police-initiated questioning, following the invocation of counsel, was not interrogation, but merely an exploration of whether or not the defendant really wanted counsel.

The Supreme Court of Connecticut ignored the clear holding of this Court that such police contact is only permissible after the invocation of counsel, if the accused, himself, initiates the contact. There can be no doubt in this case that the police began to question Acquin again, a mere fifteen minutes after he had asked for counsel.

In short, the fact pattern and the legal problems raised in Edwards and Acquin are virtually identical; the main difference is that the police in Acquin acted more egregiously and more aggressively than the police in Edwards. The decisions in Edwards v. Arizona and State v. Acquin are diametrically opposed and cannot be reconciled. It is the mandate of this Court to eliminate such blatant conflicts in our constitutional law and in our criminal courts. The confession obtained in Edwards was suppressed because it was obtained in violation of the Fifth and Fourteenth Amendments. The Acquin confession must be suppressed for the same reasons.

The conflict between the State of Connecticut's highest court and this court

justifies the grant of certiorari to review the judgment below.

This Major Criminal Case Presents an Important Opportunity for this Court to Articulate Standards for Determining when a Fourth Amendment Seizure has Occurred, Thereby Reducing Conflict Among the State and Federal Appellate Courts.

In State v. Acquin, 187 Conn. 647 (1982) (App. A, pp. 11a-12a), while paying lip service to Dunaway v. New York, 442 U.S. 200 (1979), the Connecticut Supreme Court concluded that the defendant's initial, four-hour incommunicado questioning by State Police officers who had searched him and driven him more than thirty miles to State Police headquarters, was not a Fourth Amendment seizure, because "a reasonable person would have believed that he was free to leave, under all the circumstances surrounding the incident." United States v. Mendenhall, 446 U.S. 544 (1980).[4] In a case that is strikingly

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4 The Connecticut Supreme Court did not attempt to resolve the ambiguity created by the differing results in Mendenhall and Reid v. Georgia, infra, and does not at all mention Reid.

similar to Dunaway, procedurally and substantively, the Connecticut Supreme Court, like the New York appellate court in Dunaway, was in disagreement with the trial court which had, on the compelling facts before it, concluded that the defendant had been subject to a Fourth Amendment seizure. (App. F, pp. 6f-7f)

The decision of the Connecticut Supreme Court in this major criminal case, in fact, the largest mass murder in the history of Connecticut, graphically illustrates the profound confusion surrounding the question of when a Fourth Amendment "seizure" has occurred.

It had long been assumed that the test for determining if a "seizure" has occurred had been articulated in Terry v. Ohio, 392 U.S. 1, and its progeny. For almost fifteen years, it has been hornbook law that a person was seized for purposes of the Fourth Amendment "when the officer by means of physical force or show of authority, has in some way restrained the liberty of a citizen", so that the citizen is not free to walk away. Terry v. Ohio, supra, at 19, n. 16. Obviously, the Terry test has not been clear enough to withstand

the rigorous scrutiny demanded by airport and border search cases. United States v. Mendenhall, supra; Reid v. Georgia, 448 U.S. 371 (1980); United States v. Brignoni-Ponce, 422 U.S. 873 (1975). In United States v. Mendenhall, supra, at 553-54, only Justice Rehnquist and Justice Stewart were able to agree that a "seizure had occurred within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." The reaction to the 3-3-2 split in Mendenhall has been much like the reaction to a technical knockout in a prizefight: very little is resolved. As the Fifth Circuit noted recently, "the Supreme Court has not yet articulated a definitive standard to determine precisely when a Fourth Amendment seizure has occurred." United States v. Setzer, 654 F.2d 354, 357 (5th Cir. 1981).

The split decision in Mendenhall has left the state and federal appellate courts in disarray. The reactions among the United States Courts of Appeals have largely been to fashion their own patch-

work tests, drawing from their own post-Terry case law: the Sixth and Seventh Circuits seem to have, reluctantly adopted Justice Stewart's Mendenhall test[5]; the Fifth and Ninth Circuits seem to have fashioned their own more subjective tests[6]; and the First, Second, Fourth and D.C. Circuits have extrapolated variants of an objective test.[7]

5 United States v. Jefferson, 650 F.2d 854, 856, n. 1 (6th Cir. 1981); United States v. Nembhard, 676 F.2d 193, 201, n. 7 (6th Cir. 1982); United States v. Black, 675 F.2d 129, 134 (7th Cir. 1982).

6 United States v. Morin, 665 F.2d 765 (5th Cir. 1982); United States v. Patino, 649 F.2d 724, 728-29, n. 4 (9th Cir. 1981).

7 United States v. Viegas, 639 F.2d 42, 44 (1st Cir. 1981), but see also Borodine v. Douzanis, 592 F.2d 1202, 1207 (1st Cir. 1979); United States v. Place, 660 F.2d 44, 50 (2d Cir. 1981), cert. denied, U.S. , 102 S.Ct. 2905 (1982); United States v. Marin, 669 F.2d 73 (2d Cir. 1982); Moore v. Ballone, 658 F.2d 218, 227 (4th Cir. 1981); Sharpe v. United States, 660 F.2d 967 (4th Cir. 1981); Gomez, et al v. Turner, 672 F.2d 134, 141 (D.C.Cir. 1982).

The situation in Connecticut is as unsettled as it is in the federal courts. Indeed, the Connecticut Supreme Court has demonstrated its own substantial confusion on the question of Fourth Amendment seizures by reaching wholly inconsistent results in State v. Ostroski, 186 Conn. 287, 440 A.2d 984 (1982) and in the case at bar.

Although this Court has granted certiorari in yet another airport search case, Florida v. Royer, No. 80-2146, argued 10/12/82, it is clear, from exerpts at oral argument, 32 Cr.L. 4067 (1982) that this Court is very much concerned with promulgating a workable test which will provide a framework for other appellate courts to determine when a Fourth Amendment seizure has occurred.

It is respectfully submitted, however, that the airport/border search situation is not the most durable crucible for fashioning such a test. The problem is that airport search cases may belong to a special narrow category of cases that resemble Terry stops. As the Fifth Circuit has suggested, there may be three distinct types of police/citizen en-

counters: "(1) full scale arrests; (2) restraints of citizens which are less than arrests but which nevertheless trigger Fourth Amendment scrutiny; and (3) personal intercourse between police and citizens which may be for investigative purposes but which are not restraints on the citizen's liberty and which thus are not encompassed by the Fourth Amendment." United States v. Setzer, supra, at 357.

The case at hand clearly illustrates the obfuscation that has resulted from viewing airport detentions as a microcosm of the much larger Fourth Amendment picture. Obviously, the initial encounter between Acquin and the police as carefully detailed at pp. 7-12, infra, cannot be characterized, by any stretch of the judicial imagination, as "personal intercourse between police and citizens which may be for investigative purposes, but which are not restraints on the citizen's liberty." This type of custodial questioning bears absolutely no relation to the street encounters permitted in Terry or the airport detention described in Mendenhall or the seizure condemned in Reid. The drafters of the Fourth Amendment could never have

contemplated the difficulties of balancing police and citizen interests inherent in the complicated twentieth century settings of airports and high crime areas, but the framers were certainly familiar with the spectre of citizens being "picked up" or "hauled in" for long and rigorous "investigations." Moore v. Ballone, supra, at 225; see Boyd v. United States, 116 U.S. 616, 630 (1886).

When suppression of a confession resulting from seizures based on less than probable cause as mandated by Dunaway v. New York, supra and Taylor v. Alabama, U.S. , 102 S.Ct. 2664 (1982) turns, as in the case at bar, on the question of seizure, then the need for a clear "seizure" standard becomes painfully apparent. As Justice Stevens makes clear in Michigan v. Summers, 452 U.S. 692, 101 S.Ct. 2593, n. 15, one of the main reasons that Terry-type minimal intrusion stops are permissible on less than probable cause, is precisely because they are not likely to have the coercive aspects of a custodial interrogation that are designed to induce self-incriminatory statements. Whatever rules this Court may evolve for the spe-

cial circumstances for on-the-street encounters in high crime areas or for the unique circumstances engendered by airport stops, this Court should not lose the opportunity to make crystal clear that seizures for interrogation purposes are subject to the full rigors of Fourth Amendment scrutiny.

This unresolved question of Fourth Amendment seizure is a vital issue that justifies a grant of certiorari to review the judgment below.

The Connecticut Supreme Court's Approval of the Coercive Interrogation Techniques of the Connecticut State Police is Substantially in Conflict with the Great Body of Law Promulgated by this Court Condemning Police Interrogation Practices Designed to Destroy the Defendant's Will to Resist.

In approving the admission of the defendant's confession, the Connecticut Supreme Court concluded that there "is simply no evidence that the circumstances [leading up to the confession] were such as to overbear [Acquin's] will to resist . . . ." (App. A, p. 49a) This holding, in light not only of the facts of this case, but also in light of the

forty-five year history of this Court's decisions condemning offensive police practices,[8] flies in the face of any concept of due process of law or voluntariness as we have come to understand it. More than twenty years ago, in reversing another egregious Connecticut State Police interrogation case, Justice Frankfurter wrote for this Court:

> What actually happens to them [the accused] behind the closed door of the interrogation room is difficult if not impossible to ascertain . . . [If] a person is abused, he is faced with the task of overcoming, by his lone testimony, solemn official demands. The person knows this -- knows that no friendly or disinterested witness is present -- and the knowledge may itself induce fear. But, in

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8 Brown v. Mississippi, 297 U.S. 278 (1936); Rogers v. Richmond, 365 U.S. 534 (1961); Townsend v. Sain, 372 U.S. 293 (1963); Lee v. Mississippi, 332 U.S. 742 (1948); Payne v. Arkansas, 356 U.S. 560 (1958); Turner v. Pennsylvania, 338 U.S. 62 (1949); Davis v. North Carolina, 384 U.S. 737 (1966); Fay v. Noia, 372 U.S. 391 (1963); Spano v. New York, 360 U.S. 315 (1959); Jackson v. Denno, 378 U.S. 368 (1964).

> any case, the risk is great that the police will accomplish behind their closed door precisely what the demands of our legal order forbid: make a suspect the unwilling collaborator in establishing his guilt.

Culombe v. Connecticut, 367 U.S. 568, 573-75 (1961).

There can be no doubt that the Connecticut State Police had but one purpose in detaining Lorne Acquin on July 22, 1977; that purpose was to obtain admissions and, if possible, a confession, "despite his constituted right not to do so," Escobedo v. Illinois, 378 U.S. 478, 485 (1964).

The facts, as minutely detailed in pp. 12-17, infra, have every earmark of a coerced confession:

the defendant was held, initially without probable cause, for almost twenty hours; he was in the company of three or more State troopers at all times; he was taken more than thirty miles from his home and questioned in at least four different police-dominated locations; he was held incommunicado and all attempts by friends, relatives, his counselor and his parole officer to see him were rebuffed by

the State Police; for at least three hours of the interrogation, he was questioned in the middle of a July afternoon in an unventilated 12' x 12' storage room; his requests for counsel were subverted; he was strip-searched and driven past the crime scene after he invoked the right to counsel over and over again; and a State-employed psychiatrist was brought to the interrogation site for the express purpose of helping police extract a confession.

Arthur Culombe had been the object of the over-zealous interrogation techniques of the Connecticut State Police; Lorne Acquin, learned twenty years later, that those techniques have not changed significantly. As Justice Douglas wrote in Culombe,

> "the system of police interrogation under secret detention falls heaviest on the weak and illiterate. . . . [t]he member of a minority group without status or power is the one who suffers most when we leave the constitutional right to counsel to the discretion of the police. 367 U.S. at 640-41.

This Court has recently held in Estelle v. Smith, 451 U.S. 454 (1981)

that Culombe v. Connecticut's proscription against police making an accused the "deluded instrument of his own conviction" limits the use of statements obtained by psychiatrists in examining criminal defendants. This holding is perfectly consistent with the substantive due process holding of Leyra v. Denno, 347 U.S. 556 (1954). The ability of the police to obtain confessions or incriminating statements through the use of psychiatric intervention is clearly a practice designed to overbear the will of the accused[9] and should be strictly circumscribed by this Court.

The purpose and flagrancy of the official misconduct in this case, cries out for condemnation by this Court. Brown v. Illinois, 422 U.S. 590, 604 (1975). The important question of whether or not police may use psychiatric intervention as an interrogation tool justifies a grant of certiorari in this case.

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9 Expert psychiatric testimony supporting the defendant's claim that his will was overborne was presented by Thomas Szasz, M.D. and Richard Loewenstein, M.D. (App. F)

CONCLUSION

For these reasons a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Connecticut.

Respectfully submitted,

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